No. 2861

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

DHANNA SINGH,
Appellant,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

BRIEF OF APPELLEE.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

JOHN W. PRESTON,
United States Attorney,

CASPER A. ORNBAUN,
Asst. United States Attorney,
Attorneys for Appellee.

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STATEMENT OF THE CASE.

The statement set forth in the brief of counsel for appellant is substantially correct.

Appellant Dhanna Singh is an East Indian, a British subject, twenty-seven years of age and a laborer. He states that he landed at San Francisco, California, in 1908; that he visited Canada in 1912 for two weeks; that he again went to Canada in April 1914, and remained there until on or about March 1, 1915, when he reentered the United States surreptitiously with two other fellow countrymen.

It is stated in counsel's brief on page 2, that the Government concedes that the said appellant entered the United States after due inspection in 1908. In this particular, the facts set forth by appellant are incorrect. There is nothig in the record that would justify a concession of this kind.

Upon the re-entry into the United States by the said appellant, he was arrested upon a warrant emanating from the Secretary of Labor, charging him with having been found in the United States in violation of the Act of Congress approved February 20, 1907, amended by the Act approved March 26, 1910, for the following, among other reasons:

> "That they (other aliens having been arrested with the said appellant) were persons likely to become public charges at the time of their entry into the United States and that they entered without the inspection contemplated and required by said Act. (Section 20 and all sections requiring aliens to be inspected)".

Upon the arrest of appellant by the Immigration officers, said appellant petitioned for a writ of habeas corpus. To this petition the Government filed a demurrer and upon the hearing of this demurrer, the original record of the Bureau of Immigration was filed and made a part of the said petition for a writ of habeas corpus. The Court sustained the Government's demurrer to said petition, thus this appeal.

ASSIGNMENT OF ERRORS.

I.

The Court erred in denying a Writ of Habeas Corpus.

II.

The Court erred in dismissing said petition for a Writ of Habeas Corpus.

III.

The Court erred in not granting a Writ of Habeas Corpus.

IV.

The Court erred in holding that there was sufficient or any evidence presented to the Secretary of Labor, to give him the right or authority to issue a warrant of deportation against said Dhanna Singh.

V.

The Court erred in holding that the matters alleged in the petition for a Writ of Habeas Corpus did not show that said Dhanna Singh did not have a full and fair hearing before the Commissioner of Immigration and the Immigration Inspectors acting under said Commissioner and the Secretary of Labor.

VI.

The Court erred in holding that the said Commissioner of Immigration and the Immigration In-

spector acting under said Commissioner and the Secretary of Labor did not totally and wholly disregard the testimony presented by said applicant and his witnesses.

VII.

The Court erred in not holding that said Dhanna Singh had been unfairly examined owing to the prejudicial conduct of said Immigration officials.

VIII.

The Court erred in not holding that the said Dhanna Singh is restrained of his liberty without due process of law.

IX.

The Court erred in not holding that the said Dhanna Singh was denied due process of law in this, that he is ordered deported without any fair hearing or any hearing, and is denied the legal protection of the law guaranteed by the constitution and laws of the United States; by the treaty existing between the United States of America and Great Britain according to them the equal protection of law guaranted to any subject of the most favored nation and also by the rules of regulation of the Department of Labor now and then enforced.

ARGUMENT.

While counsel for appellant sets forth various assignments of error, there is but one material

question to be determined in this case and that is whether or not said appellant, having at one time been in the United States and deported into British Columbia, could subsequently re-enter the United States surreptitiously and without inspection, without being subject to deportation.

An examination of the record will show conclusively that the facts in this case are undisputed. In fact, the petitioner admits in his petition that he entered the United States over the Canadian border without inspection. The memorandum prepared for the Acting Secretary, which was prepared subsequent to the taking of the testimony in this case, is as follows:

"April 2, 1915.

Warrant.

In re DHANNA SINGH, GUDRIC SINGH, and JAGHAR SINGH; entered from Canada without inspection near Porthill, Idaho, on or about the first of March, 1915.

Memorandum for THE ACTING SECRETARY:

These Hindus were arrested at Walla Walla, Wash., under warrant of the 10th instant, on the grounds that they were persons likely to become public charges at the time of their entry and that they entered without inspection.

The letter attached herewith from the Commissioner of Immigration at Seattle sets forth fully and accurately the facts found in the rec-

ord of hearing. All three of the aliens admitted that they crossed the border from Canada without inspection and that they are without employment and have no prospects of same. Two of them are without funds, while the third, although having but a few dollars in his possession, claims that he has an interest in some real property in Canada. As stated by the Commissioner of Immigration at Seattle, Canada would probably permit of their return there if their entry could be verified, but that such verification is almost impossible. Moreover, by adopting the practice of returning these aliens to India, it would tend to some extent to discourage the efforts of members of this race to obtain illegal entry into the country.

It is therefore recommended that the above mentioned aliens be deported to India at Government expense, on the grounds set forth in the outstanding warrant.

It is quite probable that the alien Dhanna Singh is responsible for bringing his fellow countrymen across the border, but this cannot be clearly shown and the Bureau is of the opinion that action looking to his prosecution for violation of the penal section of the Immigration Act should not be instituted.

(Signed) ALFRED HAMPTON,
Acting Commissioner-General."

It is a well established principle in the Immigration Law that if an alien, after entering the United States, should leave the United States and enter a

foreign country, and again re-enter the United States from said foreign country, without inspection, that he can then be deported for such entry.

Ex parte Greaves, 222 Fed. 157,

Williams vs. *United States,* 186 Fed. 479,

Ex parte Li Dick, 176 Fed. 998,

Ex parte Hamaguchi, 161 Fed. 185,

and said order of deportation may be made at any time after the last entry into the United States by said alien providing said order is made before the expiration of the three years' period.

Siniscalchi vs. *Thomas,* 195 Fed. 701,

United States vs. *Uhl,* 211 Fed. 628,

Lewis vs. *Frick,* 233 U. S. 291.

Appellant's counsel also takes the position that the order of deportation should have directed that the aliens be deported to Canada instead of India, but in answer to this contention, the Government directs attention to the following cases:

Lewis vs. *Frick,* 233 U. S. 291,

United States vs. *Reiz,* 203 Fed. 441.

In the case of *Lewis* vs. *Frick, supra,* Justice Pitney, delivering the opinion, stated:

"Petitioner is an alien and a native of Russia. He came thence to this country, entering

at the Port of New York, in the month of September, 1904, lived in or near New York city until March, 1910, then removed to Detroit, Michigan, and has since made that city has home. On November 17, 1910, he crossed the river from Detroit to Windsor, Canada, and brought back with him into the United States a woman, avowed by him to be his wife. but whose actual status was questioned, as will appear. A few days later he was arrested upon a warrant from the Department of Commerce and Labor, issued under the immigration act of February 20, 1907 (34 Stat. at Large, 898, chap. 1134) as amended March 26, 1910 (36 Stat. at Large, 263, chap. 128, U. S. Comp. Stat. Supp. 1911, p. 501), and after a hearing conducted by an inspector, the Secretary, on February 14, 1911, found 'that said alien is a member of the excluded classes, in that he * * * * procured, imported, and brought into the United States a woman for an immoral purpose,' etc., and thereupon ordered that he be deported to the country whence he came, to wit, Russia. * * * *

Petitioner not having been convinced under par. 3, his destination is to be determined rather in the light of paragraphs 20, 21, and 35. And first, we take it to be clear (notwithstanding the peculiar phraseology of par. 20) that the three-year period limits only the authority to deport, and does not affect the determination of the country to which an alien is to be deported. Respecting this matter, the sections are somewhat lacking in clearness. But at least, par. 35 indicates a legislative intent that aliens subject

to deportation shall be taken to trans-Atlantic or trans-Pacific ports, if they came thence, rather than to foreign territory on this continent, although it may have been crossed on the way to this country. This was recognized by Rule 38 of the Immigration Regulations, in force December 12, 1910.

It is to be noted that the classes of aliens who are subject to deportation are not wholly made up of those who enter in violation of the law; in some cases cause for deportation may arise after a lawful entry. And in many cases the unlawfulness of the entry may not be discovered until afterwards. The theory of the act, as expressed in par. 2, is that the undesirables ought to be excluded, at the sea port or at the frontier; but pars. 20, 21, and 35 recognize that this is not always practicable. Of course if petitioner's attempt to bring a woman into the country for an immoral purpose had been discovered in time, he might have been physically excluded from entry at Detroit upon his return from Windsor. In that event he would naturally have remained upon Canadian soil. But since his offense was not discovered in time to permit of his physical exclusion, so that he becomes subject to the provisions for deportation, his destination ought not to be controlled by the facticious circumstances that he went into Canada to procure the prostitute. And, upon the whole, it seems to us that the act reasonably admits of his being returned to the land of his nativity, that being in fact 'the country whence he came' when he first entered the United States. See *Lavin* v. *Le Fevre,* 60 C. C. A. 425,

125 Fed. 693, 696; *Ex parte Hamaguchi,* 161 Fed. 185, 190; *Ex parte Wong You,* 176 Fed. 933, 940; *United States* vs. *Ruiz,* 121 C. C. A. 551, 203 Fed. 441, 444."

It will be noted on page 47 of the record of the Bureau of Immigration that in all probabilities the Canadian authorities would not accept said appellant in the event he was ordered deported there by the Immigration officials. The Government therefore submits that because of the fact that said appellant entered the United States from Canada surreptitiously and without examination or inspection by Government officials, that he is now subject to the order of deportation, as provided for in the said record of the Bureau of Immigration, and that India is the proper place to which he should be deported.

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